CHAPTERLAND FAQS

Classified Forest Land FAQS
G.L. c. 61B

Application Procedures / Deadlines FAQS
Published in *City & Town* August 1, 2013
Examples Updated May 2016

Chapter 61B

1. **What is the procedure and deadline for applying for classification of recreational land for local tax purposes under G.L. c. 61B?**

Application for taxation of land as classified recreational land under G.L. c. 61B must be made annually. The landowner must complete *Form CL-1 Application for Agricultural or Horticultural Land Classification* and should submit it to the assessor on or before October 1 of the year before the beginning of the fiscal year for which classification is sought. G.L.c. 61B, § 3. Upon approval, the assessors will value and tax the land based on its farm use as of the next January 1 assessment date for the following fiscal year. If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land (*Form CL-3, Agricultural or Horticultural Land Tax Lien*). The statement constitutes a lien on the land for all taxes due under G.L. c. 61B. The landowner must pay all applicable recording fees. G.L. c. 61B, § 6.

> *For example, a landowner applying for classification of the land for fiscal year 2017, which beings July 1, 2016, should submit Form CL-1 to the assessors on or before October 1, 2015 in order to receive a fiscal year 2017 actual tax bill based on the reduced current use value of the land.*

However, a landowner who misses the October 1 deadline has up to 30 days after the actual tax bills are mailed for the fiscal year to file the application. The application deadline is extended until that time in a revaluation year. G.L. c. 61B, § 5. Because all boards of assessors must review their valuations and consider them interim year adjustments in the years between triennial certification years, every year is a revaluation year for purposes of the statutory deadline extension.

> *For example, in a community that mails its fiscal year 2017 actual tax bills on December 31, 2016, a landowner applying for classification of the land for that year may submit Form CL-1 to the assessors on or before January 30, 2017.*

2. What are the basic requirements for land to be classified as recreational land for local tax purposes?

The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be retained in one of the following conditions in a manner that preserves wildlife or other natural resources: a substantially natural, wild, or open landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, or to be devoted to a qualifying recreational use in a manner that does not materially interfere with the environmental benefits derived from the land. To be classified based on use for a qualifying recreational purpose, the land must be open to the public or members of a non-profit organization. No public access is required if classification is sought based on the condition of the land. It can be open to the public or maintained as private undeveloped land. G.L. c. 61B, § 1.

3. What does contiguous land mean?

Contiguous land abuts and is separated only by a public or private way or waterway, e.g., land across the road that would touch but for the road. Contiguous land may cross municipal boundaries.

4. What does same ownership mean?

Same ownership means that the legal title to all of the land must be held in the same name(s) and in the same capacity. The ownership of the land must be identical.

> *For example, John Jones is the sole owner of record of two abutting parcels of 3 acres each. The 6 acres are under the same ownership. They are not under the same ownership, however, if John Jones is the sole owner of one parcel and owns the other with his spouse.*

5. How is the minimum acreage requirement computed?

The minimum acres required for classification as recreational land must be contiguous and under the same ownership. Any land under and associated with buildings or improvements so as to interfere with the environmental benefits of the land as open and undeveloped, such as paved parking areas and roads, are excluded: (1) the land under the house and (2) the land around the house that is regularly used for residential living purposes and not actually being used for a qualifying recreational use under G.L. c. 61B, § 10.

6. What are the qualifying recreational land uses under Chapter 61B?

To be classified under Chapter 61B based on the qualifying recreational use rather than condition of the land, the land must be (1) open to the public or members of a non-profit organization and (2) used for one of the following purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang-gliding, archery, target shooting and commercial horseback riding and equine boarding. (See In Our Opinion

2006-78) It may not be used for horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure. G.L. c. 61B, §.

7. What is the procedure to appeal the denial of an application for classification of land as forest land under Chapter 61B?

The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as recreational land under G.L. c. 61B. If the assessors do not act within that time, the application is deemed allowed. The assessors must send a written notice of allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2 Notice of Action on Application for Forest-Horticultural or Horticultural-Recreational Land Classification, sets forth the reasons for any disallowance and explains the landowners' appeal rights. It must be sent by certified mail. G.L. c. 61B, § 6.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessor's decision, *Form CL-8, Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61B, § 14.

8. What is the procedure to contest the assessment of a property, roll-back or conveyance tax assessed a landowner whose property is classified under Chapter 61B?

A landowner aggrieved by the assessment of a tax on land classified under G.L. c. 61B may apply for abatement of the tax to the assessors within 30 days of notice of the assessment. *Form CL-7 Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land.* If the landowner disagrees with the assessors' decision, or the assessors do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, *Form CL-8, Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*, or within 3 months of the date of the application for abatement, whichever is later. If the appeal relates to the annual property tax on the classified land, the tax must be paid for the Appellate Tax Board to hear the appeal. G.L. c. 61AB, § 14.

9. What rights in land classified under Chapter 61B does a municipality have when the landowner changes its use or decides to sell it for another use?

The classified land statutes provide preferential property tax benefits to landowners who make a long-term commitment to using their land for qualifying forest uses. In exchange for providing those benefits, a municipality has a right of first refusal (ROFR) or option to purchase the land in certain cases where a change of use is planned by the landowner or a new owner after a sale.

Specifically, a municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified. G.L. c. 61B § 9.

> *For example, John Jones owns 100 acres that are classified and assessed property taxes on the basis of their classified use for fiscal years 2002-2015. The municipality has a ROFR if he enters into a purchase and sales agreement to sell for, or he decides to change the use to, a residential, commercial or industrial use, at any time during those fiscal years (July 1, 2001 – June 30, 2015) and the following fiscal year July 1, 2015 to June 30, 2016.)*

Under the ROFR, the land cannot be sold or converted unless the landowner gives the municipality advance notice of the sale or conversion and the municipality notifies the landowner that it will not exercise option. The content and manner of notices must comply with specific requirements. Upon receipt of a notice that complies with the applicable requirements, the municipality has the option to buy the property or assign its option to the Commonwealth, another political subdivision or a non-profit conservation organization. If the landowner is selling the property, the municipality must match a bona fide offer the landowner received. If the landowner is converting the use, the municipality must pay fair market value, which is determined by an impartial appraisal. The option must be exercised with 120 day of (1) compliance with the notice requirements in the case of a sale or (2) agreement of the consideration in the case of a conversion.

The ROFR does not apply if the landowner (1) simply discontinues the classified use, i.e., leaves the land undeveloped, or (2) sells or converts the land for a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use.

Whenever local officials receive any notice indicating the landowner's intent to sell or convert classified land, or believe a notice should be given, they should consult municipal counsel for guidance on the municipality's rights and the procedures it must follow.

10. What tax benefits provided a landowner may be recaptured by a municipality when classified land under Chapter 61B is sold or its use changed?

As a general rule, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when classified land is sold for or converted to another use. No penalty tax is assessed, however, when the classified land is being sold for or converted to a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use. See Adams V. Assessors of Westport, 76 Mass. App180 (2010)(conveyance tax); Ross V. Assessors of Ipswich, (ATB Docket # F239496, November 21, 2000)(roll-back tax),

both of which involved classified farm land and extended the same exemption from the ROFR to the penalty taxes.

A. Roll-Back Tax – A roll-back tax is assessed when classified land is changed to a non-qualifying use. A non-qualifying use means (1) land retained as open space as mitigation of a development or (2) any other use or condition that does not qualify for classification under recreational land under Chapter 61B. The tax assessed to the owner of the land when the change to non-qualifying use occurs. G.L. c. 61B, § 14.
The roll-back tax provides for recapture of the property tax savings on the land for the immediately preceding five year period. If the non-qualifying change in use occurs in a fiscal year the land is classified, the five year period includes the current year and immediately preceding four years. If it occurs in a fiscal year the property is not classified, the recapture period is the immediately preceding five year period. If there were tax savings received under the program for any of the years in the five year recapture period, the savings and interest on those savings for each year are totaled and assessed as the roll-back tax. The amount saved for each year is simply the difference between the tax assessed on the classified land under the program and the tax that would have been assessed on the fair cash value of the land if not classified. The interest on the amount saved each year is calculated at the rate of 5% from the dates interest accrued on unpaid tax installments under the payment system the municipality used for that fiscal year until the date the roll-back tax is paid. (Note that interest is not added as part of a roll-back assessed on land classified under Chapter 61A if the land was classified as of July 1, 2006 and been continuously owned since that date by the July 1, 2006 owner, or that owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any of those deceased relatives. G.L. c. 61A, § 13.)

B. Conveyance Tax - A conveyance tax is assessed as an alternative to a roll-back tax when classified land is sold for or converted to use or condition that does not qualify for classification under any of the three chapters within a certain time period, but only if greater than the roll-back tax. G.L. c. 61B, § 7.
Specifically, a conveyance tax must be computed, compared to the roll-back tax and assessed if greater when (1) a landowner is selling or converting classified forest or farm land under Chapter 61 or 61A to a non-qualifying use within 10 years after the date the owner acquired the land or began the continuous use of the land for the classified use, whichever is earlier; or (2) a landowner is selling classified recreational land under Chapter 61B for a non-qualifying use within 10 years from the beginning of the fiscal year in which it was classified. The seller is not assessed a conveyance tax if the buyer files an affidavit with the assessors that the classified use will be continued after the sale. If that new owner does not continue that use, or another use that would qualify for classification under any of the three chapters, for at least five years, the new owner is assessed the tax that would have been due when the property was sold. The conveyance tax does not apply to a number of deeds or transfers, including but not limited to, mortgage deeds; deeds that correct, modify, supplement or confirm a previously recorded deed; deeds between spouses or a parent and

child with no consideration, foreclosures of mortgages and conveyances by the foreclosing parties; and property transferred as the result of a death. (Note that a conveyance tax also does not apply to a seller who owned forest land classifieds under Chapter 61 in or before fiscal year 2008. St. 2006, c. 394, § 51.)

The conveyance tax is computed by multiplying the applicable conveyance tax rate to the sales price of the classified land in the case of the sale, or the fair market value as determined by the assessors in the case of a change to a non-qualifying use by the landowner. The conveyance tax rate is set on a descending basis over the initial 10 years of ownership or classification. Under Chapters 61 and 61A the rate is 10% in the first year of ownership, 9% in the second, 8% in the third, and down to 1% in the tenth. Under Chapter 61B, the rate is 10% for the first five years of classification and 5% for the sixth through tenth year of classification.

> *For example, Mary Smith acquired 50 acres in 2001 and had the land classified beginning in fiscal year 2003. In fiscal year 2016, she enters into a purchase and sales agreement with a developer to sell land for residential development. No conveyance tax applies because Mary has owned the classified land (or had the land classified under Chapter 61B) for over 10 years. However, if Mary had owned the land, or the land was classified under Chapter 61B, for only 8 years, the conveyance tax would be assessed if it was greater than the roll-back tax.*
>
> *The roll-back assessed based on Mary's tax savings in fiscal years 2012-2016 during which there were savings in all 5 years. However, if Mary's land was last classified in fiscal year 2013, the roll-back would be based on tax savings in fiscal years 2011-2015, during which there were savings in only 3 of the 5 years.*

11. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of land under Chapter 61B?

As a general rule, development or installation of solar or wind farms or facilities on classified land will constitute a change in use and trigger a municipality's ROFR and penalty tax assessment.

To be classified as recreational land under Chapter 61B, the land must be: (1) retained a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, in a manner that does not materially interfere with the environmental benefits derived from the land and be open to the public or members of a non-profit organization. G.L. c. 61B, § 1.

Land on which solar or wind farm or facility is sited is not undeveloped land being retained in a natural or other permitted condition. It is being used to generate power, a commercial or industrial use and for operational and security reasons, will have limited access, i.e., will not be available for use by the public or a membership organization for one of the permitted recreational uses. Therefore, the land used for power generation purposes would no longer qualify for classification. As with classified farm land, the ineligible land would include land under solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm facility (e.g., access roads) or impacted by its operation.